

Appl. No. 09/944,891
Amdt. Dated February 13, 2008
Reply to Office Action of November 18, 2005

Docket No. IA00011
Customer No. 22917

REMARKS/ARGUMENTS

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behfar, et al. (WO 00/77620 A2) in view of Oliveira, et al. (US 006579208 B2), further in view of Lee, et al. (US 006609127 B1).

To establish a *prima facie* case of obviousness, and hence to find Claims 1-22 unpatentable under 35 U.S.C. § 103(a) over the combination of Behfar/Oliveira/Lee, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based upon applicant's disclosure. MPEP at § 2142.

In the present case, all three criteria are not met. There is no suggestion or motivation to modify or combine the references. Even if there was a suggestion or motivation to modify or combine the references, there is no expectation of success. Finally, the Behfar/Oliveira/Lee references do not teach or suggest the claim limitation to active network.

In the Office Action, the Examiner states "Behfar fails to disclose the coupling of devices through an active network for controlling the flow of data amongst the devices. Oliveira discloses the use of a control area network (CAN) Behfar and Oliveira fail

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to disclose the use of active networks. Lee discloses coupling of devices ... through the use of control area networks (CAN), which also comprises of active networks such as WANs, LANs, etc. as well as passive networks such as fibreoptic links."

In other words, the Examiner admits that Behfar and Oliveira fail to disclose the use of active networks. However, the Examiner seems to assert that Lee discloses the use of active networks by taking the mention of "WANs, LANs, etc." in Lee (col. 3, lines 29-35) as a teaching or suggestion of "active networks" as the Applicants have claimed. Such an assertion is unsupported and the Examiner should withdraw the rejection.

The term "active network" is known to one of ordinary skill in the art. This is not an arbitrary assumption made by the attorney, but is based upon experts in the field of computing and networking. See Tennenhouse references provided with the Applicants' 10 January 2003 Information Disclosure Statement. These references and numerous articles, written by third parties, demonstrate that an active network is a term used for recognizing a very particular kind of network. The interpretation of the term "active network" given by those of ordinary skill in the art is clear: an active network is a network including nodes capable of performing custom operations on messages that pass through the nodes; does not require a central server or computing resources; are aware of the contents of the messages transported and can participate in the processing and modification of the message while they travel through the network. *Id.*

With the requirements for patentability in mind, Applicants claim a vehicle comprising an active network, along with other limitations, and a vehicle communication network comprising an active network. The Applicants assert that an active network is known to the skilled artisan to include nodes capable of performing custom operations

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on the messages that pass through the nodes. An active network does not require a central server or computing resources. Active network nodes are aware of the contents of messages transported and can participate in the processing and modification of the messages while they travel through the network. That is, an active network is a defined physical structure that is unlike other communication structures such as a CAN network, communication busses and/or passive networks.

Moreover, the applicants clearly distinguish particular kinds of passive networks, such as bus architectures, in the background portion of the specification. Beginning at page 2, line 3 of the specification, the applicants explain that, in accordance with existing design philosophy, various communication bus structures for interconnecting control elements, sensors, actuators and like structures within vehicle have been used, but that these architectures suffer a number of limitations. The applicants further explain, beginning at page 2, line 1 of the specification, that legacy architectures, including CAN networks, are distinguished from active networks. Further, beginning at page 2, line 19 of the specification, that legacy architectures have been incorporated in connection with bus architectures and these architectures do not provide sufficient reliability for vehicle functional requirements such as power train, suspension, airbag systems, and the like, and usage has been limited to applications wherein information technologies are added to the vehicle. Thus, as the applicants have explained, existing architectures have not met the needs of efficient, reliable integration of in-vehicle electronic technologies and plug-and-play upgradeability.

Clear from the foregoing discussion, the applicants have claimed a specific physical structure, namely an active network known to have particular characteristics,

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within a vehicle. This active network is not a CAN network, a bus architecture and a passive network. In light of the specification, the broadest reasonable interpretation of the term active network does not mean CAN networks, bus structures and/or passive networks. For the claims to be unpatentable, i.e., not to meet the requirements of 35 U.S.C. § 103(a), the prior art must teach or suggest each and every limitation contained in the claims, and particularly, in this case, must teach or suggest a vehicle including an active network. Because the prior art fails to teach or suggest this structure or methods employing such structures, claims 1-22 do meet the requirements of 35 U.S.C. § 103(a) and are patentable.

Cited in the Office action as teaching an "active network" is Lee. However, the statements in Lee are clear that an active network is not described. As noted, an active network does not require a central server or computing resources. Lee requires each CAN system include "a master controller," which can only be considered a central server or resource for each CAN system. Lee, col. 2, lines 32-50. Further, Lee describes that during routing of data between master controllers, a single master controller is chosen to be an "activated master controller" where the activated master controller controls the flow of communications in the CAN. Lee, col. 9 lines 52 et seq., FIG. 4. Clear from the discussion of how data is communicated within the Lee network (col. 9 lines 52 et seq., FIG. 4), the CAN network in Lee requires the master controller be in control of the flow of data. It is apparent from a careful reading of Lee that it describes nothing more than a CAN network having master controllers, and makes no teaching or suggestions whatsoever of an active network.

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The Office Action suggests that the use of the terms "WANs, LANs, etc." in Lee as an indication that the network described by Lee is an active network. This misconstrues the use of the terms in Lee. The use of the terms is for extending the coupling of the CAN network, e.g. to outside one physical location such as the home and/or business. The fact that the CAN may also have WANs, LANs, etc. couplings does not make the CAN network of Lee into an active network. That is, Lee requires a master controller and the requirement for a master controller, by definition, removes the CAN network from the definition of an active network. In any case, the terms "WANs, LANs, etc." are not used to teach or suggest an active network.

Independent Claims 1 and 14 positively recite an active network, which is a specific physical structure known to have particular characteristics, within a vehicle. This active network is not a CAN network, a bus architecture and is not a passive network or any combination. Lee does not disclose any active network and thus Claims 1 or 14 cannot be taught or suggested by the Behfar/Oliveira/Lee combination.

Even if Lee taught the use of an active network, which it does not, there is no motivation to combine the CAN network structure taught by Lee into the vehicle structures taught by Behfar and/or Oliveira. In any case, there is no expectation of success to modify or combine the references. A person of ordinary skill in the art would not combine the CAN home and/or business technology with the in-vehicle technology of Behfar and/or Oliveira for many reasons, e.g. a vehicle has physical constraints that are not in a home and/or business.

Applicants contend that without anything further, the office action appears to rely solely on hindsight analysis, i.e., taking the disclosure of the pending application as a

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blueprint for piecing together the prior art. *See Ecolochem, Inc. v. Southern California Edison Company*, 227 F.3d 1361, 1372 (Fed. Cir. 2000) (citing *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999) ("Combining prior art references without evidence of [] a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight.")). This approach has long been rejected by the Federal Courts, and therefore the rejection of the pending claims 1-22 as obvious over Behfar, Oliveria, and Lee is improper.

In view of the foregoing remarks, it is respectfully submitted that each of the rejections of Claims 1-22 are patentable over the prior art, and that all of the pending claims should be allowed. As such, the Examiner should withdraw the rejections of Claims 1-22.

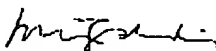
The Applicants believe that the subject application, as amended, is in condition for allowance. Such action is earnestly solicited by the Applicants.

Please charge any fees that may be due to Deposit Account 502117, Motorola, Inc.

Respectfully submitted,

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Attachments